

**281—41.162 (256B,34CFR300) Supplementation of state, local, and other federal funds.**

**41.162(1) *Expenditures.*** Funds paid to a state under this chapter must be expended in accordance with all the provisions of this chapter.

**41.162(2) *Prohibition against commingling.***

*a.* Funds paid to a state under this chapter must not be commingled with state funds.

*b.* The requirement in 41.162(2)“*a*” is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a state under this chapter. Separate bank accounts are not required. (See 34 CFR 76.702, fiscal control and fund accounting procedures.)

**41.162(3) *State-level nonsupplanting.***

*a.* Except as provided in rule 281—41.203(256B,34CFR300), funds paid to a state under Part B of the Act must be used to supplement the level of federal, state, and local funds, including funds that are not under the direct control of the SEA or LEAs, expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those federal, state, and local funds.

*b.* If the state provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of 41.162(3)“*a*” if the Secretary concurs with the evidence provided by the state under 34 CFR Section 300.164.